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Remarks

In the Office Action mailed March 13, 2002, claims 1-57 are pending in the application. Claims 8-9, 35-36, 42, 44 and 48 are withdrawn from consideration. Claims 1-7, 10-34, 37-41, 43, 45-47 and 49 and 57 are rejected.

1. Election of Species

In the Office Action mailed March 13, 2002, the Examiner states that the Applicants are required under 35 U.S.C. §121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner believes that, as currently presented, claims 1-7, 10-17, 20-34, 38-41, 45-47 and 49-57 are generic. Applicants affirm their previous election of claims 18, 19, 37 and 43.

2. Rejection of Claims as Obvious Over Krzysik In View of Klofta

In the Office Action mailed March 13, 2002, the Examiner rejects claims 1-7, 10-13, 16-20, 40, 41, 43, 45-47, 49, 50 and 52-57 as being unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,149,934 issued to Krzysik et al. (hereinafter "the Krzysik patent") in view of U.S. Patent No. 6,238,682 issued to Klofta et al. (hereinafter "the Klofta patent"). A *prima facie* case of obviousness has not been established and therefore, Applicants respectfully traverse the rejection.

With respect to claims 1, 2, 20, 22-25, 40, 41, 53 and 55-57, the Examiner believes the Krzysik patent discloses an absorbent article including a topsheet, a backsheet and an absorbent core located in between the topsheet and the backsheet. The Examiner believes the Krzysik patent discloses a lotion composition on the topsheet where the lotion composition is melted, applied to the topsheet and then cooled. The Examiner also believes that the Krzysik patent discloses a lotion composition having a melting temperature of between 30 and 100 degrees Celsius; a low shear viscosity between 50,000 and 80,000 centipoise; a high shear viscosity between 150 and 200 centipoise; a penetration hardness between 5 and 360 mm; and disposition on the topsheet in an amount of 1-50 grams per square meter. The Examiner acknowledges that the Krzysik patent does not disclose a lotion composition including a hydrophilic solvent, a high molecular weight polyethylene glycol, a fatty acid, a fatty alcohol and an extracted botanical active.

The Examiner believes the Klofta patent discloses a lotion composition having 5-60% hydrophilic solvent, a high molecular weight polyethylene glycol, 0.1-60% of a skin conditioning agent (such as fatty alcohols and fatty acids), and 0.1-6% of a botanical active. The Examiner believes it would have

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been obvious to one having ordinary skill in the art at the time of the invention to modify the composition of the Krzysik patent to be the composition of the Klofta patent. With respect to dependent claims 3 and 45 (selection of hydrophilic solvents), the Examiner refers the Applicants to col. 17, lines 13-42 of the Klofta patent. With respect to dependent claims 4, 5 and 46 (molecular weight of polyethylene glycol), the Examiner refers the Applicants to col. 17, lines 23-35 of the Klofta patent. With respect to claims 6 and 47 (selection of fatty alcohol), the Examiner refers the Applicants to col. 24, lines 11-14 of the Klofta patent. With respect to claim 7 (selection of extracted botanical active), the Examiner refers the Applicants to col. 16, lines 31-42. With respect to claims 10, 11 and 49 (inclusion of an emulsifying surfactant and its selection), the Examiner believes the Klofta patent discloses the use of a surfactant with an HLB value of greater than 7. The Examiner acknowledges that the Klofta patent fails to disclose the use of glycerol stearate, polysorbate or water dispersible metal salts. The Examiner believes it would have been an obvious matter of design choice to have the surfactant be either stearate, polysorbate or a water dispersible metal salt.

With respect to claims 12, 13 and 50 (inclusion and selection of natural fats and oils), the Examiner refers the Applicants to col. 27, lines 30-37 of the Klofta patent. With respect to claims 16, 17 and 52 (inclusion and selection of emollient), the Examiner refers the Applicants to col. 18, lines 10-12 of the Klofta patent. With respect to claims 18, 19 and 53 (inclusion and selection of a rheology modifier), the Examiner refers the Applicants to col. 24, lines 30-40 of the Klofta patent. With respect to claim 43 (application by slot coating), the Examiner refers the Applicants to col. 13, line 59 of the Krzysik patent.

Claim 1 of the present invention is directed to an absorbent article including an outer cover, a liquid permeable bodyside liner and an absorbent body that is located between the bodyside liner and the outer cover. The bodyside liner defines a bodyfacing surface and is connected in superposed relation to the outer cover. The article includes a composition on at least a portion of the bodyfacing surface of the bodyside liner. The composition includes from about 10 to about 90 weight percent of a hydrophilic solvent; from about 5 to about 90 percent by weight of a high molecular weight polyethylene glycol; from about 0 to about 40 percent by weight of a C₁₄ to C₃₀ fatty alcohol; from about 0 to about 40 percent by weight of a C₁₄ to C₃₀ fatty acid; and from about 0.1 to about 10 percent by weight of extracted botanical active. Claim 20 of the present invention is similar to claim 1 and further includes that the extracted botanical active may be selected from echinacea, yucca, tumeric, licorice, oat extract, willow herb, spirulina, strontium chloride, green tea, black tea, oolong tea, Chinese tea, tea components and mixtures of such compounds.

Claim 40 of the present invention is directed to a method of applying a composition to a bodyfacing surface of a bodyside liner of an absorbent article. The method includes a step of heating a composition including a hydrophilic solvent, a high molecular weight polyethylene glycol, a C₁₄ to C₃₀

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fatty alcohol, a C₁₄ to C₃₀ fatty acid and from about 0.1 to about 10 percent by weight of extracted botanical active. The extracted botanical active may be selected from echinacea, yucca, tumeric, licorice, oat extract, willow herb, spirulina, strontium chloride, green tea, black tea, oolong tea, Chinese tea, tea components and mixtures of such compounds. The composition is heated to a temperature above the melting point of the composition where the composition has a melting point of from about 32°C to about 100°C. The method includes a step of applying the composition to a bodyfacing surface of a bodyside liner of an absorbent article and a step of resolidifying the composition.

Claim 54 of the present invention is directed to a method for protecting the skin barrier on a skin surface of a user. The method includes a step of contacting the skin surface of the user with a bodyfacing surface of a liner material where the bodyfacing surface has a composition including a hydrophilic solvent, a high molecular weight polyethylene glycol, a C₁₄ to C₃₀ fatty alcohol, a C₁₄ to C₃₀ fatty acid and an extracted botanical active. The method also includes a step of maintaining the bodyfacing surface in contact with the skin surface for a sufficient amount of time to transfer the composition to the skin surface and a step of repeating the contact for a sufficient period of time to protect the skin barrier.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. The Examiner has not identified why one of ordinary skill in the art would have been motivated to combine the disclosures of the Krzysik and Klofta patents. The Examiner states she believes it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the composition of the Krzysik patent to be the composition of the Klofta patent, but she does not identify any specific disclosure of the references that would lead to such a combination. The Krzysik patent relates to absorbent articles that include a lotionized bodyside liner for improved skin health benefits. (See Col. 1, lines 7-12). Conversely, the Klofta patent relates to antimicrobial lotion compositions that are applied to tissue papers. (See Col. 1, lines 17-29). The Examiner does not explain why one of skill in the art would have been motivated to combine the absorbent articles of the Krzysik patent with the tissue papers of the Klofta patent.

With respect to the third element of a *prima facie* case of obviousness, the combination of the Krzysik and Klofta patents does not disclose or suggest each element of the presently claimed invention. With respect to claims 2, 23, 41 and 56, the Examiner believes the Krzysik patent discloses a lotion formulation having a low shear viscosity between 50,000 and 80,000 centipoise and a high shear viscosity between 150 and 200 centipoise. While the Krzysik patent discloses lotion formulations

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having ranges of viscosities (see Col. 12, lines 41-59), the Krzysik patent does not teach or suggest the claimed viscosity ranges under low shear or high shear conditions. Second, with respect to claim 54, the combination of the Krzysik and Klofta patents does not disclose a method for protecting the skin barrier on a skin surface of a user (using the claimed composition) that includes a step of maintaining the bodyfacing surface in contact with the skin surface for a sufficient amount of time to transfer the composition to the skin surface and a step of repeating the contact for a sufficient period of time to protect the skin barrier. For at least these reasons, the Applicants submit that claims 1-7, 10-13, 16-20, 40, 41, 43, 45-47, 49, 50 and 52-57 are patentable over the Krzysik patent in view of the Klofta patent.

3. Rejection of Claims as Obvious Over Krzysik In View of Klofta and Further in View of Kropf

In the Office Action mailed March 13, 2002, the Examiner rejects claims 14, 15, 21-39 and 51 as being unpatentable under 35 U.S.C. §103(a) over the Krzysik patent in view of the Klofta patent and further in view of U.S. Patent No. 6,316,030 issued to Kropf et al. (hereinafter "the Kropf patent"). Applicants respectfully traverse the rejection.

With respect to claims 14, 15, 21, 39 and 51 (inclusion of sterols or sterol derivatives), the Examiner acknowledges that the Krzysik and Klofta patents fail to disclose a composition containing a sterol. The Examiner believes that the Kropf patent discloses the use of a composition containing 0.1-5% of a sterol. The Examiner believes it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the compositions of the Krzysik and Klofta patents to include a sterol as the Examiner believes is disclosed in the Kropf patent. With respect to claim 32 (selection of sterol or sterol derivative), the Examiner refers the Applicants to col. 2, lines 5-38 of the Kropf patent. With respect to claim 26 (dependent on claim 21, selection of hydrophilic solvent), the Examiner refers the Applicants to col. 17, lines 13-42 of the Klofta patent. With respect to claims 27 and 28 (dependent on claim 21, molecular weight of the high molecular weight polyethylene glycol), the Examiner refers the Applicants to col. 17, lines 23-35 of the Klofta patent. With respect to claim 29 (dependent on claim 21, selection of fatty alcohol), the Examiner refers the Applicants to col. 24, lines 11-14 of the Klofta patent. With respect to claim 34 (selection of extracted botanical active), the Examiner refers the Applicants to col. 16, lines 31-42 of the Klofta patent. With respect to claim 30 (selection of emulsifying surfactant), the Examiner believes that the Klofta patent discloses the use of a surfactant with an HLB value of greater than 7, but the Examiner acknowledges that Klofta fails to disclose the use of glycerol stearate, polysorbate or water dispersible metal salts. The Examiner believes it would have been an obvious matter of design choice to have the surfactant be either stearate, polysorbate or water dispersible salts.

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With respect to claim 31 (selection of natural fat or oil), the Examiner refers the Applicants to col. 27, lines 30-37 of the Klofta patent. With respect to claim 33 (selection of emollient), the Examiner refers the Applicants to col. 18, lines 10-12 of the Klofta patent. With respect to claims 37 and 38 (inclusion and selection of rheology modifier), the Examiner refers the Applicants to col. 24, lines 30-40 of the Klofta patent.

Claim 21 of the present invention is directed to an absorbent article including an outer cover, a liquid permeable bodyside liner and an absorbent body that is located between the bodyside liner and the outer cover. The bodyside liner defines a bodyfacing surface and is connected in superposed relation to the outer cover. The bodyside liner includes a composition on at least a portion of the bodyfacing surface. The composition includes from about 10 to about 90 percent by weight of hydrophilic solvent, from about 5 to about 85 percent by weight of high molecular weight polyethylene glycol having a molecular weight of at least about 720 daltons, from about 1 to about 30 percent by weight of a C14 to C30 fatty alcohol, from about 1 to about 10 percent by weight of emulsifying surfactant having a combined HLB in a range greater than 7, from about 0.1 to about 30 percent by weight of natural fats or oils, from about 0.1 to about 10 percent by weight of sterols or sterol derivatives, from about 0.1 to about 10 percent by weight of emollient and from about 0.1 to about 10 percent by weight of extracted botanical active. Claim 39 of the present invention is directed to a similar absorbent article and composition except that the composition includes from about 5 to about 95 percent by weight of high molecular weight polyethylene glycol. Claim 39 specifies that the extracted botanical active may be selected from echinacea, yucca, tumeric, licorice, oat extract, willow herb, spirulina, strontium chloride, green tea, black tea, oolong tea, Chinese tea, tea components and mixtures of such compounds.

As with the previous obviousness rejection, the Applicants believe that the Examiner has not established a prima facie case of obviousness. As previously stated, the Examiner has not identified the motivation or suggestion for combining the Krzysik and Klofta patents and additionally, no motivation or suggestion for further combining the Kropf patent has been identified. The Kropf patent is directed to the use of nanoscale sterols and sterol esters with particle diameters of 10 to 300 nm for the production of cosmetic or pharmaceutical preparations. (See Col. 1, lines 53-56). The Kropf patent does not appear to teach or suggest the use of nanoscale sterols and sterol esters for use in compositions that are applied to absorbent articles or tissue papers, therefore there is no reason why one of skill in the art would have been motivated to combine the disclosure of the Kropf patent with the disclosures of the Krzysik and Klofta patents. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. Further, the teaching, suggestion or incentive must flow from the prior art- not from the claimed invention. For at least these reasons, Applicants submit that claims 14,

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15, 21-39 and 51 are patentable over the Krzysik patent in view of the Klofta patent and further in view of the Kropf patent.

In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 1-57. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-2433.

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account. A duplicate of this sheet is provided.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE

I, Amy M. Smith, hereby certify that on June 26, 2002, this Amendment A is being sent via facsimile to the United States Patent & Trademark Office to RightFax Number 703-872-9302.

By: Amy M. Smith
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Marked-up version showing changes

The insult solution is prepared by diluting a 10 mg/ml stock solution in phosphate-buffered saline to a working concentration of 250 μ g/ml. The base of the stock solution is 50 mM NaOAcetate, pH 5.5 and 0.15 M NaCl stored at -80°C. One ~~milliliter~~ milligram of the stock protease insult ~~solution~~ contains 2558 USP units of trypsin and 298 USP units of chymotrypsin and is available from Specialty Enzymes, Inc. of Chino, CA. The bile acid insult solution can be prepared by dissolving 65 mg of cholic acid, 62 mg of deoxycholic acid and 31 mg of chenodeoxycholic acid in 10 ml of phosphate-buffered saline. The bile acid insult components can be purchased from Sigma Chemical Co. of St. Louis, MO. Phosphate-buffered saline, pH 7.4 (hereinafter "PBS") can be purchased from Life Technologies of Rockville, Maryland.